

**5.1. REQUEST FOR MINOR CHANGE AND EXTENSION TO CURRENCY PERIOD FOR DEVELOPMENT APPLICATION CA2638/2008**

<b>REPORT AUTHOR</b>	Daniel Lamond- Planning Officer
<b>MANAGER</b>	Paul Hoye, Manager Environment and Planning
<b>DEPARTMENT</b>	Environment and Planning
<b>APPLICATION NO</b>	CA 2008_2639/4
<b>PROPOSAL</b>	Request for Minor Change and extension to development approval CA 2639/2008
<b>APPLICANT</b>	Port Douglas Steam Train Co Pty Ltd C/- RPS Australia East Pty Ltd PO Box 1949 CAIRNS QLD 4870
<b>LOCATION</b>	9 St Crispins Avenue, Port Douglas and 4-10 Escape Street, Port Douglas
<b>PROPERTY</b>	LOT: 1 on SP: 311489 & LOT: 2 on SP: 311489
<b>PLANNING SCHEME</b>	2018 Douglas Shire Council Planning Scheme Version 1.0
<b>ZONING</b>	Tourist Accommodation Zone
<b>LEVEL OF ASSESSMENT</b>	The original application was impact assessable, however the minor change and extension of time proposal does not require public notification.
<b>PROPERLY MADE DATE</b>	5 January 2021
<b>STATUTORY ASSESSMENT DEADLINE</b>	3 February 2021
<b>REFERRAL AGENCIES</b>	N/A

**LOCALITY**



Figure 1. Locality Plan

## RECOMMENDATION

That Council resolves the following in relation to the request to extend the currency period and minor changes to conditions of approval for a combined development approval for a material change of use and reconfiguration of a lot (30 lots & common property) with a House on 28 lots, a display home on a lot and a food and drink outlet on a lot over land described as Lots 1 and 2 on SP311489:-

1. Approves the request for an extension of currency period for a further four (4) years up to and including 20 January 2025;
2. Approves the minor change to the approved plan of development for the amalgamation of Lots 12, 13 and 14 and Lots 11 and 33 to create two larger residential allotments as detailed on Drawing No. PR141541-300 dated 20 January 2021;
3. Condition 9 & Condition 37 as detailed in Decision Notice dated 6 May 2020 remain unchanged.

Note - A 600mm landscape strip may be provided within the Escape Street Road Reserve adjacent the existing fence. This will need to be detailed as part of the Landscape Plan as required by conditions of the development approval.

4. Condition 21 of Decision Notice dated 6 May 2020 be amended to read as follows:-

### Parkland

21. The applicant shall make contribution for parkland for twenty six (26) ~~thirty-three (33)~~ allotments in accordance with Council's requirements for parkland contribution, as defined under Planning Policy No.5 or any other relevant Policy or Code applicable at time of payment.
5. Council notes that a review of the provision of on-site car parking spaces must be undertaken during design review and endorsement of each stage as part of condition 45.

## REASONS FOR DECISION

The reasons for this decision are:

1. Sections 80 and 81A of the *Planning Act 2016*:
  - a) to ensure compliance with the *Planning Act 2016*.
2. Findings on material questions of fact:
  - a) the change application was properly lodged to the Douglas Shire Council on 2 March 2020.
  - b) the development application contained information from the applicant which Council reviewed together with Council's own assessment in making its assessment manager decision.
3. Evidence or other material on which findings were based:
  - a) the applicant's reasons have been considered and the following findings are made:

- i) **Conditions 9 and 37 remain unchanged in order to allow for reasonable pedestrian movement and infrastructure protection in accordance with the requirements the FNQROC Development Manual & Planning Scheme requirements.**
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## **EXECUTIVE SUMMARY**

Council is in receipt of a request which seeks approval to extend the currency period for a further 4 years in addition to seeking amendments to the approved plan with respect to the amalgamation of several of the approved lots and to further amend conditions of the approval.

The request relates to the combined development approval for a material change of use and reconfiguration of a lot (30 lots & common property) with a House on 28 lots, a display home on a lot and a food and drink outlet on another lot. The existing development approval with conditions is included as Attachment 1. The land is described as Lots 1 and 2 on SP311489, located at 4-10 Escape Street and 9 St Crispins Avenue, Port Douglas.

The request to have the currency period extended by a further 4 years and to amalgamate several allotments is supported and recommended for approval.

The request which seeks amendment to Condition 9 and Condition 37 to approve unapproved landscaping works undertaken on the road verge of Escape Street is not supported. It is recommended that the conditions requiring a grassed road verge and street tree plantings undertaken in accordance with the FNQROC Development Manual remain unchanged.

See the conditions as they exist in the Assessment section of this report below.

## **TOWN PLANNING CONSIDERATIONS**

### **Background**

At the 28 April 2020 Ordinary Council Meeting, Council resolved to agree to a minor change request to allow the applicant to remove the existing footpath at the Escape Street frontage and re-turf the verge area as well as plant street trees in accordance with the separation distances, sizing, species requirements, service and infrastructure protection requirements and all other design standards for street tree planting from the FNQROC Development Manual.

Council agreed to the request by the applicant to remove the existing footpath and replace it with turf and street trees so pedestrians could walk on the grassed verge while supporting an aesthetically pleasing vegetated road verge.

The applicant has now removed the footpath and densely planted out the road verge with trees and shrubs and installed an irrigation system. All works have been undertaken without the consent of Council and in breach of the requirements of the conditions of approval as amended by Council on 28 April 2020.

The Applicant has been advised to either remove the landscaping works or request Council to further amend conditions and to request Council accept the works that have been undertaken. The Applicant has chosen to make the request to amend the conditions.

## Proposal

The applicant proposes to extend the currency period of the development approval for a further four years, up to and including 20 January 2025.

The minor change request seeks changes to conditions on the development approval. Three changes are proposed along with a fourth necessary change for completeness:

1. Amend condition 9 by removing reference to street tree planting in accordance with the FNQROC Development Manual and agree to accept the existing planting on the road verge.
2. Amend Condition 37 to remove the requirement to re-turf the road verge where the former footpath was located and agree to accept the existing planting on the verge.
3. Amend the site plan to allow two of the approved allotments to become larger by amalgamation of approved lots 12,13 and 14 and approved lots 11 and 33.
4. Condition 21 is being amended to reflect the correct number of allotments approved as part of the minor change for infrastructure charging.

## ASSESSMENT

### Road Verge Treatment

Conditions 9 and 37 were formulated as part of the previous minor change to allow the applicant to vary the standard requirement of subdivisions to provide a footpath on the road. The applicant sought an alternative to allow them to remove the existing footpath and plant street trees on the road verge as well as make good the road verge with turf. Ultimately this still allowed pedestrians to get off the road carriageway and walk on a grassed verge.

Condition 9 & Condition 37 of the development approval reads as follows:-

#### ***Landscaping & Fencing***

9. ***Provide a Landscape Concept Plan for the development that provides for an attractive residential development and details how the development interacts with the external roads of Escape Street and St Crispins Avenue. The Landscape Concept Plan must include:-***
  - (a) ***Street tree planting in accordance with the FNQROC Development Manual;***
  - (b) ***Deep planting of setback areas fronting Escape Street and St Crispins Avenue;***
  - (c) ***External fencing treatment details;***
  - (d) ***Internal plantings;***
  - (e) ***Opportunities for internal street tree planting;***
  - (f) ***A species list in accordance with Planning Scheme Policy SC6.7-Landscaping.***

***The Landscape Plan must be endorsed by the Chief executive Officer prior to the issue of a Development Permit for Building Work. All landscaping and fence treatments must be installed in accordance with the endorsed landscape plan prior to endorsing the Plan of Survey for the respective allotment or stage.***

### ***Bikeway/Pathway***

- 37. Remove the existing section of Bikeway/ Pathway at the Western Side of Escape Street and re-turf to the satisfaction of the Chief Executive Officer.**

### Applicant's Comments

The Application submitted to request changes of the conditions does not provide any justification as to why the works were done or provide any commentary around the use of road verges for pedestrian use or the protection of services in the road verge.

The comments made in the application simply request Council to accept the landscaping works despite the works not being in accordance with the FNQROC Development Manual requirements.

### Officer Comments

The proposed request is contrary to Council's previously considered decision on the desired treatment to the Escape Street road reserve.

The request is entirely inconsistent with the accepted treatment of road verges within the Shire and does not reflect best practice with respect to pedestrian usage, protection of services, and promoting walkable communities.

The landscaping works undertaken results in there being no space for pedestrians to get off the road and walk on the road verge as the planting and mulching extends to the kerb. The approved subdivision only provides one car parking space per house and the internal road is single lane with extremely narrow verges unsuitable for car parking.

There is no visitor parking provided. Garage door setbacks to the boundary of the allotments range from a distance of around 3-4 metres, which does not allow a second vehicle to park on the land and would require that a second vehicle or visitor to park partly on the land in tandem on the driveway and partly within the internal road verge.

The internal road is single lane with limited passing opportunities and so having cars parked out in the internal road verge will further limit passing opportunities as cars are required to mount the kerb to pass internally. Ultimately this is likely to result in significant on-street parking demand for the length of Escape Street once the subdivision is complete.

Upon a review of the initial development approval it is evident that the houses were approved with a range of single and double parking spaces on each site. That being considered, Council needs to ensure that there is a range of houses provided with two parking spaces which reflects the dispensation given on the original approval.

The first stage of development consisting of three houses which are currently under construction include one allotment with the ability to cater for two vehicles parked in tandem on site but the other two allotments only accommodate one parking space on site.

Future stages will need to have the parking spaces reviewed so that some allotments can accommodate at least two cars on-site in order to provide some alleviation of the parking demand on Escape Street.

Mobility scooters and pedestrians will be forced to use the road if the applicant's proposal was supported. Navigating a road with parked cars with no access to the verge would not be a reasonable requirement to impose on pedestrians.

There is a private footpath on the opposite side of the road, however, this is within the property boundaries of the Reef Resort and cannot be considered public.

Additional concerns are raised with the performance of the dense planting on the road verge as it eliminates the ability for the development to comply with Planning Scheme policy SC6.3 *Crime Prevention Through Environmental Design (CPTED)*.

In summary the CPTED planning Scheme policy seeks to have development provide casual surveillance to the street frontage of land so that the opportunity for crime on the immediate street frontage area is stifled.

The policy gives a guideline to achieve passive surveillance through sight lines from rooms of houses by having landscaping maintained to allow clear sight lines and not create visual barriers to the street.

The proposed deep planting of the verge with dense shrub species as evident below in figure 2 directly conflicts with this.

Further concerns are raised with the existing landscaping that has been implemented on the road verge as it conflicts with Council's services. There is limited water and sewer main conflict, but there is significant underground drainage pipe conflict.

The landscaping has been planted with no regard to underground service alignment and with no regard to the design requirements in accordance with the FNQROC Development Manual.

For example, Standard Drawing S4210 and Design Guidelines D9.07 from the development manual require street trees to be no closer than 800mm from the kerb, root guard is to be implemented 600mm deep and 2000mm in length for kerb protection and service protection and street trees are to be twenty metres apart.

Figure 2 below demonstrates non-compliance with all three of these requirements. Figure 3 below details underground service alignments.

For these reasons, the proposed minor changes cannot be supported and the existing landscaping needs to be made compliant with Council's previously considered and desired treatment of the road verge.



Figure 2: Unapproved road verge landscaping



Figure 3: Underground service locations

## Extension of Currency Period

Section 87 of the Planning Act 2016 allows the assessment manager to consider any matter that the assessment manager considers relevant in the assessment and decision for extending the currency period of the development period.

The approval for the subdivision will lapse in late January if not extended as the land use has not yet commenced. However, substantial subdivision civil works and partial house construction has occurred.

For this reason, the development approval is recommended for a currency period extension for a further four years up to and including 20 January 2025.

## Amalgamation of Approved Lots

The proposed amalgamation of approved lots 12,13 and 14 and approved lots 11 and 33 is supported as having larger more unconstrained allotments within the development is a benefit.

No concerns are raised with this component of the proposed minor change.

## Referral Agency Requirements

There was no requirement to refer the minor change request to the State Assessment and Referral Agency.

## Internal Referrals

Councils Infrastructure Department was referred the proposal and raises concerns with the on-street planting. The Infrastructure Department has requested that the landscaping on the verge be removed and replaced with FNQROC Development Manual compliant street trees in order to protect its assets in the road reserve.

## COUNCIL'S ROLE

Council can play a number of different roles in certain circumstances and it is important to be clear about which role is appropriate for a specific purpose or circumstance. The implementation of actions will be a collective effort and Council's involvement will vary from information only through to full responsibility for delivery.

The following area outlines where Council has a clear responsibility to act:

**Regulator:** Meeting the responsibilities associated with regulating activities through legislation or local law.

Under the *Planning Act 2016* and the *Planning Regulation 2017*, Council is the assessment manager for the application.

## ATTACHMENTS

1. Attachment 1- Current Development Approval [5.1.1 - 19 pages]
2. Attachment 2- Changed Site Plan [5.1.2 - 1 page]

6 May 2020

Enquiries: Daniel Lamond  
Our Ref: CA2639/2008 (952510)

Administration Office  
64 - 66 Front St Mossman  
P 07 4099 9444  
F 07 4098 2902

Port Douglas Steam Train Co P/L  
C/- RPS Australia East Pty Ltd  
PO Box 1949  
**CAIRNS QLD 4870**

Dear Sir/Madam

**Application for Minor Change to the combined development approval for a material change of use and reconfiguration of a lot (30 lots & common property) with a House on 28 lots, a display home on a lot and a food and drink outlet on a lot over land described as Lots 1 and 2 on SP311489**

Please find attached the Decision Notice for the above-mentioned minor change application.

Please quote Council's application number: CA2639/2019 in all subsequent correspondence relating to this development application. Should you require any clarification regarding this, please contact Daniel Lamond on telephone 07 4099 9444.

Yours faithfully



**For**  
**Paul Hoyer**  
**Manager Environment & Planning**

- Decision Notice
- Approved Plans

**DECISION NOTICE —  
MINOR CHANGE APPROVAL (WITH CONDITIONS)  
(GIVEN UNDER SECTION 63 OF *THE PLANNING ACT 2016*)**

Please be aware that Douglas Shire Council has assessed your application and decided it as follows:

**1. Applicant's details**

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Name: Port Douglas Steam Train Co P/L  
Postal Address: C/- RPS Australia East Pty Ltd  
PO Box 1949  
CAIRNS QLD 4870

**2. Location details**

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Street Address: 9 St Crispins Avenue and 4-10 Escape Street, Port Douglas  
Real Property Description: Lots 1 and 2 on SP311489  
Local Government Area: Douglas Shire Council

**3. Details of proposed development**

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Minor Change to Combined Application- material change of use and reconfiguration of a lot (30 lots & common property) with a House on 28 lots, a display home on a lot and a food and drink outlet on a lot.

**4. Decision**

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Date of decision: 28 April 2020

Decision details: Approved in full with conditions. These conditions are set out in Schedule 1.

**5. Approved plans and specifications**

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Copies of the following plans, specifications and/or drawings are enclosed.

Drawing or Document	Reference	Date
PR133458-7a	Plan Prepared by RPS Australia East Pty Ltd, Sheet 1 of 3.	6 November 2018

**6. Conditions**

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This approval is subject to the conditions in Schedule 1. These conditions are clearly identified to indicate whether the assessment manager or concurrence agency imposed them.

### **7. Further development permits**

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Please be advised that the following development permits are required to be obtained before the development can be carried out:

- All Building Work
- All Plumbing and Drainage Work

### **8. Properly made submissions**

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Not applicable — No part of the application required public notification.

### **9. Currency period for the approval**

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This development approval will lapse at the end of the period set out in section 85 of *Planning Act 2016*.

### **10. Rights of appeal**

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The rights of applicants to appeal to a tribunal or the Planning and Environment Court against decisions about a development application are set out in chapter 6, part 1 of the *Planning Act 2016*. For particular applications, there may also be a right to make an application for a declaration by a tribunal (see chapter 6, part 2 of the *Planning Act 2016*).

A copy of the relevant appeal provisions are included in Schedule 2.

## SCHEDULE 1 – CONDITIONS AND ADVICE

### PART 1A—CONDITIONS IMPOSED BY THE ASSESSMENT MANAGER

#### Plan of Development

1. Carry out the approved development generally in accordance with the approved drawing(s) and/or document(s), and in accordance with:-
  - (a). The specifications, facts and circumstances as set out in the application submitted to Council;
  - (b). The following conditions of approval and the requirements of Council's Planning Scheme and the FNQROC Development Manual.

Except where modified by these conditions of approval.

#### Timing of Effect

2. The conditions of the Development Permit must be effected prior to endorsing the Plan of Survey, except where specified otherwise in these conditions of approval.

#### Amendment to Design

3. The approved plan must be amended to accommodate the following requirements:-
  - (a). Provide a staging plan illustrating each stage of the residential development. Each stage is to comprise of a stand alone group of allotments where the opportunity exists;
  - (b) provide a central waste storage facility accessed via Escape Street. In order to comply with this condition, it is required that Lot 15 be dedicated to contain the waste storage facility and that the surrounding allotment boundaries be reconfigured accordingly;
  - (c) the nominated building footprints on the approved plan are no longer being pursued and therefore are not approved and do not apply.

An amended layout plan and staging plan detailing the above requirements must be endorsed by the Chief Executive Officer prior to the issue of a Development Permit for Building Work for the first house on the land.

#### Boundary Setbacks

4.
  - (a). Side and rear boundary setbacks for each dwelling on each lot must be compliant with the Queensland Development Code MP1.1 unless otherwise approved by the Chief Executive Officer;
  - (b). Setbacks to Escape Street may be no less than four (4) metres except for lots 16, 28 and 29 which may have a building setback of three (3) metres from Escape Street for a maximum of 30% of the building fronting Escape Street unless otherwise approved by the Chief Executive Officer;

- (c). Setbacks to St Crispins Avenue may be no less than four (4) metres; and
- (d). Setbacks to the internal CTS road must be determined in accordance with Conditions of this approval.

### **Currency Period**

- 5. This development approval is valid up to and including 21 January 2021.

### **Amenity**

- 6. The approved use must not be conducted so as to cause a nuisance or annoyance to persons not associated with the use and so as not to adversely affect any other property.

### **Traffic Management**

- 7. The ingress/egress to the site shall be provided with a physical means of speed control. Such speed control device shall be shown on any plans submitted for approval for building works and shall be constructed and maintained at all times.
- 8. The applicant shall provide bollard lighting at the property boundary to indicate access to the car parking area at the time of applying for carrying out building works.

### **Landscaping & Fencing**

- 9. Provide a Landscape Concept Plan for the development that provides for an attractive residential development and details how the development interacts with the external roads of Escape Street and St Crispins Avenue. The Landscape Concept Plan must include:-
  - (a) Street tree planting in accordance with the FNQROC Development Manual;
  - (b) Deep planting of setback areas fronting Escape Street and St Crispins Avenue;
  - (c) External fencing treatment details;
  - (d) Internal plantings;
  - (e) Opportunities for internal street tree planting;
  - (f) A species list in accordance with Planning Scheme Policy SC6.7- Landscaping.

The Landscape Plan must be endorsed by the Chief executive Officer prior to the issue of a Development Permit for Building Work. All landscaping and fence treatments must be installed in accordance with the endorsed landscape plan prior to endorsing the Plan of Survey for the respective allotment or stage.

- 10. The applicant shall provide a 1.8 metre high acoustic screen fence to the side boundaries to ensure the privacy and amenity of adjoining properties is maintained. A minimum standard for a fence of this type is a timber paling fence that is lapped and has no gaps.

### **Waste Storage & Discharge**

- 11. A central waste storage facility must be included in the layout of the development. The facility must;
  - (a) Provide storage area for the storage of a minimum of 3 bulk bins (1100L capacity) and 15 (240L capacity) recycling bins.

- (b) Contain an impervious surface for the storage of waste containers with a suitable hosecock with hose attached, located on an external front corner of the enclosure with a reduced pressure zone device;
- (c) Be roofed, bunded and connected to sewer with an approved collection device at the drainage point to sewer;
- (d) Include a two (2) metre wide sealed path to the road frontage of Escape Street for practical bin display to the satisfaction of the Chief Executive Officer;
- (e) The Community Management (CMS) Statement must state that this central facility is the waste storage facility for all of the development and must form part of the common property for the development. The CMS must state waste storage bins are not permitted to be housed within the private Community Title Scheme (CTS) allotments.
- (f) Be screened from view via landscaping treatments to be detailed on a site specific landscaping plan and noted on the landscape concept plan.
- (g) Be constructed prior to Council endorsing the first CTS allotment Plan of Survey including all landscaping treatments.

### **Air Conditioning & Service Equipment**

12. All service equipment, outdoor lighting and air conditioning equipment must be located so as not to cause a nuisance to the occupants of adjoining units or neighbouring premises. The noise levels shall be maintained in accordance with the requirements of the Environmental Protection Policy - Noise.

### **Stormwater Drainage**

13. All stormwater run-off from non-permeable surfaces and roof areas occurring on the site must be collected within the premises and discharged to the legal and practical point of discharge which has been nominated as Escape Street and/or the lagoon within the site.
14. The approved use must not:
  - (a) Interfere with the natural flow of stormwater;
  - (b) cause ponding of stormwater on adjoining properties.
15. The applicant is to provide scour protection at the proposed discharge point/s. The location/s, size, velocity, proposed means of scour protection and bank stabilisation, where required, is to be designed and submitted for approval by Council prior to lodgement of an application for Building Work. Such stormwater drainage work shall be designed and constructed in accordance with the requirements of the Far North Queensland Regional Organisation of Councils' Development Manual and shall not cause scouring, erosion, loss of vegetation, excess turbidity and landslip either within or external to the site.

### **Minimum Floor Levels**

16. The minimum floor level for all habitable rooms in any building erected on the premises must be a minimum of 3.4 metres AHD or an alternative level justified within an RPEQ certified localised flood and drainage study.

### **Amalgamation**

17. Lots 49 and 51 on SP 161464 and Lots 41 and 42 on RP 747344 must be amalgamated into one (1) allotment. The Plan of Survey must be registered with the Department of Natural Resources and Water (DNRW) prior to the issue of a development permit for building work or commencement of building work. Alternatively, a new Survey Plan in accordance with the approved plan is to be lodged for Council endorsement.

### **Compliance**

18. All works required pursuant to the conditions of this Development Permit shall be undertaken and completed in accordance with Council's requirements contained in the Planning Scheme Provisions/Codes.
19. All conditions shall be complied with prior to the final building inspection for the proposed buildings on the land or as otherwise stated in any condition of this approval.

### **External Works**

20. The applicant shall construct a six (6) metre wide concrete vehicle crossover to the site in accordance with the requirements of the FNQ Development Manual.

### **Parkland**

21. The applicant shall make contribution for parkland for thirty-three (33) allotments in accordance with Council's requirements for parkland contribution, as defined under Planning Policy No.5 or any other relevant Policy or Code applicable at time of payment.

### **Security**

22. To guarantee the satisfactory completion of the building, site works, landscaping, drainage works and any required works external to the land, the applicant shall lodge with the Council a Cash Bond or Guarantee to the value of \$20,000, such Guarantee shall be lodged prior to the issue of a Development Permit for Building Works on the land in relation to this Development Permit.

The Council may call up this Guarantee to complete all or any part of the works mentioned herein in accordance with the conditions of this approval, should the applicant fail to do so prior to issuing of a Certificate of Classification for the propose development.

### **Acid Sulfate Soils**

23. The applicant is to undertake a detailed acid sulfate soil investigation over the subject land in accordance with the requirements of the (DNRW) Guidelines for Managing Acid Sulfate Soils. This report and associated management plan are to be provided to DNRW for approval prior to the approval of the Operational Works approval.

### **Environmental Management Plan**

24. The applicant is to have prepared with the submission for approval of the engineering plans, an Environmental Management Plan (EMP) detailing the controls to be utilised to ensure that no environmental harm or nuisance is caused from the proposed use of the land and construction of the works. In particular, this plan should address such issues as dust suppression, waste disposal, acid sulfate soil management, noise management and

stormwater management (to minimise discharges of sediment, wastes and other substances).

### **Stormwater Management and Erosion and Sediment Control**

25. The management of stormwater and erosion and sediment control must be undertaken in accordance with the Preliminary Site Based Stormwater Management Plan and Erosion and Sediment Control Plan prepared by Arup and dated September 2004.

### **Health Requirements**

26. The applicant shall ensure that on completion of any site construction works the subject land shall be maintained in a clean and tidy condition at all times.
27. All building work, maintenance, repair demolition and other activities on site shall be confined to the following hours:
- (a) 6:30 am to 6:30 pm Monday to Saturday inclusive, excepting that no machinery shall be operated in conjunction with building work prior to 7:00 am.
  - (b) Building work is not permitted on a Sunday or Public Holiday at any time.

All construction works are to be carried out in compliance with the *Environmental Protection Policy (Water)* and the *Environmental Protection Amendment Regulation (No. 2)*

28. The applicant shall connect Proposed Lots 1 and 2 on RPS Drawing PR133458-4B to reticulated water supply via the main contained within the Escape Street road reserve using an easement or the provision of a separate water supply connection.
- The proposed connection point including all works required to take the reticulated supply to the boundary of the site are to be shown on the plans for Plumbing and Drainage Works approval.
29. The applicant shall provide a 100 mm diameter service to be contained within the common property to service the residential allotments and the common property.
30. The Council will make all connections to the existing main in Escape Street. The applicant is to prepay to the Council the estimated cost of the connection of the new main to the existing system. The applicant will be responsible for meeting the actual cost of the work.
31. *The applicant shall connect Proposed Lots 1 and 2 on RPS Drawing PR133458-4B to Council's reticulated sewerage network using an easement or the provision of a separate sewer connection.* The plans and specifications of the internal sewerage works must be submitted to Council at Plumbing & Drainage works application stage of review.
32. No buildings or other structures are permitted to be located within 3.5 metres of any main located on the subject site.

### **Electrical & Telephone Services**

33. Prior to the endorsement of the Plan of Survey for Proposed Lots 1 and 2 on RPS Drawing PR133458-4B and the proposed community titles development, the Applicant must submit to

Council a copy of a letter from Ergon Energy stating that satisfactory arrangements have been made for the provision of:

- (a) an underground electrical supply to the development; and
- (b) street lighting in accordance with Council's adopted standards.
- (c) locating of all above ground transformer cubicles clear of footpath area.

34. All Electricity Lines along the full frontages of the subject site (Escape Street) are to be placed underground. These works are to be undertaken by Ergon Energy at the applicant's expense.
35. All external lighting installed upon the premises including car parking areas shall be certified by Ergon Energy or such other suitably qualified person such that it shall conform with the Planning Scheme whereby vertical illumination at a distance of 1.5 metres outside the boundary of the site shall not exceed eight (8) lux measured at any level upwards from ground level.
36. Prior to the endorsement of the Plan of Survey for Proposed Lots 1 and 2 on RPS Drawing PR133458-4B and the community titles development, the Applicant must submit to Council a copy of a letter from Telstra stating that satisfactory arrangements have been made for the provision of:
- (a) an underground telephone service to the development lot; and
  - (b) locating of all above ground switching station cubicles clear of footpath areas.

### **Bikeway/Pathway**

37. Remove the existing section of Bikeway/ Pathway at the Western Side of Escape Street and re-turf to the satisfaction of the Chief Executive Officer.

### **Road Works**

38. All unused vehicle crossovers shall be reinstated with kerb and channel and landscaping.

### **Maintenance Period**

39. The Applicant shall maintain in accordance with the requirements of the Far North Queensland Regional Organisation of Councils' Development Manual all road construction works of any nature whatsoever and any drainage works carried out under the provisions of this approval for the land for a period of twenty-four (24) months. The Applicant shall make good within such period any defects arising from faulty workmanship or materials in respect to such road construction and drainage works carried out as part of the works associated with the subdivision.

### **Footpath Damage Liability**

40. All damage occasioned to footpaths and roadways adjacent to the site as a result of, or in connection with, this development must be repaired by the applicant, at their expense, prior to completion of works associated with the development.

### **Access to St Crispins Station**

41. The applicant is to provide public pedestrian access to the St Crispins Rail/Tram Station from Escape Street within an easement for the purposes of public access. The minimum width of the easement is to be two (2) metres.

## Display Home

42. After a period of two (2) years from the date of issue of the Development Permit for Building Work the use will cease and the display home will revert back to being used as a dwelling house.
43. This approval shall lapse four (4) years from the date of issue of this Development Permit, unless the use is substantially commenced and all conditions complied with.
44. The Display Home must be connected to Council's reticulated sewerage and water supply schemes. House connection branches are acceptable at this stage with full construction of the works to be undertaken prior to any additional works, beyond this approval, being undertaken on site. At time of further development the existing services to the Display House are to be disconnected and reconnected to the new system.

## Design Review, Construction & Survey Plan Endorsement

45. All house designs for each allotment comprising a stage must be submitted for review and endorsement prior to the issue of a Development Permit for Building Work for the first house within the stage.

Allotments within a stage can have their individual Plans of Survey endorsed by the Chief Executive Officer once the building slab is completed and three courses of blocks have been laid for an individual house or construction work has substantially commenced to the satisfaction of the Chief Executive Officer where not a block house.

## Easement

46. The applicant is to create an easement for public access purposes benefiting Douglas Shire Council, over the complete area of land encumbered by Easement A on RP746139 and Easement J on SP161480. The details of this easement are to be dealt with as part of the formulation of the easement documentation in consultation with Council.
47. The applicant is required to tidy up the site and maintain the site to an acceptable standard.

## Service and Access Easements

48. Written confirmation of the location of exiting services (water, sewer, electricity and telecommunications) for the land must be provided. In any instance where existing services are contained within another lot, the following applies, either;
  - (a) Relocation of the services to comply with this requirement; or
  - (b) Arrange registration of necessary easements over services and vehicle access located within another lot prior to, or in conjunction with, the lodgement of the plan sealing application for Proposed Lots 1 and 2 on RPS Drawing PR133458-4B.

## Vehicle Parking and Access

49. The amount of vehicle parking to be provided on Proposed Lot 1 on RPS Drawing PR133458-4B must be as specified in Council's Planning Scheme which is a minimum of 9 car parking spaces. The car parking layout must comply with the Australian Standard AS2890.1 2004

Parking Facilities – off-street car parking and be constructed of a compacted granitic surface to be confirmed with Council prior to construction. In addition, all parking, driveway and vehicular manoeuvring areas must be drained, use pavers or the like to delineate car parking spaces, include concrete crossover/s and the vehicle parking area shall be provided with two-way access consistent with the design standards adopted in the existing community titles development. The vehicle parking area is to be established in accordance with this condition prior to the endorsement of the Plan of Survey for Proposed Lots 1 and 2 on RPS Drawing PR133458-4B.

### Design Guidelines

50. A set of design guidelines must be prepared and submitted for endorsement by the Chief Executive Officer prior to submission of house and stage designs for endorsement. The design guidelines must include but no limited to the following design outcomes:-
- (a) The internal CTS road is not dominated by garages with reduced setbacks with the elements of the house fronting the internal street to promote casual surveillance from the residence;
  - (b) Houses have staggered setbacks to the internal CTS road to create visual interest and opportunity for landscaping treatments internal to the site;
  - (c) House designs do not create a nuisance or detrimentally impact the safety of people upon entry and egress of vehicles to the CTS allotments;
  - (d) House designs provide adequate daylight and ventilation to habitable rooms;
  - (e) House designs provide adequate daylight and ventilation to habitable rooms of houses on adjoining lots within each stage;
  - (f) House designs do not impact of the amenity and privacy of residents or future residents on adjoining lots.
51. All other conditions remain unchanged and conditions are renumbered to accommodate the above amendments.

### PART 1B—ADVICE NOTES

1. All building site managers must take all action necessary to ensure building materials and / or machinery on construction sites are secured immediately following the first cyclone watch and that relevant emergency telephone contacts are provided to Council officers, prior to commencement of works.
3. This approval does not negate the requirement for compliance with all other relevant Local Laws and other statutory requirements.
2. For information relating to the *Planning Act 2016* log on to [www.dsdmip.qld.gov.au](http://www.dsdmip.qld.gov.au). To access the *FNQROC Development Manual*, Local Laws and other applicable Policies, log on to [www.douglas.qld.gov.au](http://www.douglas.qld.gov.au).

### PART 1C- REASONS FOR DECISION

1. Sections 80 and 81A of the *Planning Act 2016*:
  - a. to ensure compliance with the *Planning Act 2016*.
2. Findings on material questions of fact:
  - a. the change application was properly lodged to the Douglas Shire Council on 2 March 2020.
  - b. the development application contained information from the applicant which Council reviewed together with Council's own assessment in making its assessment manager decision.
3. Evidence or other material on which findings were based:
  - a. the applicant's reasons have been considered and the following findings are made:
    - i. Conditions regarding flood levels and habitable floor levels have been changed to allow the applicant to seek a new RPEQ flood and drainage study to determine the Q100 flood level for the development.
    - ii. Conditions requiring the applicant to install a pollution control device at the storm water outlet for the development have been deleted as the previous Douglas Shire Council administration approved the operational works plans for the civil works supporting the development without a pollution control device. Retrospectively requiring a pollution control device would be considered unreasonable given the civil works have been completed for the subdivision.
    - iii. Conditions requiring the applicant to develop a footpath at the Escape Street Frontage have been deleted because upon inspection of the site, a landscaped outcome is more suitable to protecting the amenity of the street and neighbourhood's character. A wide footpath that occupies most of the verge against a wall without any room for shade providing greenery will render the western side of Escape Street an overly hot and suburban looking zone. Escape Street is not a through way and has little traffic. With a proper landscaping plan, pedestrian space can be provided without sacrificing the character of the area.

## SCHEDULE 2 – PLANNING ACT EXTRACT ON APPEAL RIGHTS

### CHAPTER 6, PART 1 APPEAL RIGHTS

#### 229 Appeals to tribunal or P&E Court

- (1) Schedule 1 states—
  - (a) matters that may be appealed to—
    - (i) either a tribunal or the P&E Court; or
    - (ii) only a tribunal; or
    - (iii) only the P&E Court; and
  - (b) the person—
    - (i) who may appeal a matter (the appellant); and
    - (ii) who is a respondent in an appeal of the matter; and
    - (iii) who is a co-respondent in an appeal of the matter; and
    - (iv) who may elect to be a co-respondent in an appeal of the matter.
- (2) An appellant may start an appeal within the appeal period.
- (3) The **appeal period** is—
  - (a) for an appeal by a building advisory agency—10 business days after a decision notice for the decision is given to the agency; or
  - (b) for an appeal against a deemed refusal—at any time after the deemed refusal happens; or

- (c) for an appeal against a decision of the Minister, under chapter 7, part 4, to register premises or to renew the registration of premises—20 business days after a notice is published under section 269(3)(a) or (4); or
- (d) for an appeal against an infrastructure charges notice—20 business days after the infrastructure charges notice is given to the person; or
- (e) for an appeal about a deemed approval of a development application for which a decision notice has not been given—30 business days after the applicant gives the deemed approval notice to the assessment manager; or
- (f) for any other appeal—20 business days after a notice of the decision for the matter, including an enforcement notice, is given to the person.

*Note — See the P&E Court Act for the court's power to extend the appeal period.*

- (4) Each respondent and co-respondent for an appeal may be heard in the appeal.
- (5) If an appeal is only about a referral agency's response, the assessment manager may apply to the tribunal or P&E Court to withdraw from the appeal.
- (6) To remove any doubt, it is declared that an appeal against an infrastructure charges notice must not be about—
  - (a) the adopted charge itself; or
  - (b) for a decision about an offset or refund—
    - (i) the establishment cost of trunk infrastructure identified in a LGIP; or
    - (ii) the cost of infrastructure decided using the method included in the local government's charges resolution.

### **230 Notice of appeal**

- (1) An appellant starts an appeal by lodging, with the registrar of the tribunal or P&E Court, a notice of appeal that—
  - (a) is in the approved form; and
  - (b) succinctly states the grounds of the appeal.
- (2) The notice of appeal must be accompanied by the required fee.
- (3) The appellant or, for an appeal to a tribunal, the registrar must, within the service period, give a copy of the notice of appeal to—
  - (a) the respondent for the appeal; and
  - (b) each co-respondent for the appeal; and
  - (c) for an appeal about a development application under schedule 1, table 1, item 1—each principal submitter for the development application; and
  - (d) for an appeal about a change application under schedule 1, table 1, item 2—each principal submitter for the change application; and
  - (e) each person who may elect to become a co-respondent for the appeal, other than an eligible submitter who is not a principal submitter in an appeal under paragraph (c) or (d); and
  - (f) for an appeal to the P&E Court—the chief executive; and
  - (g) for an appeal to a tribunal under another Act—any other person who the registrar considers appropriate.
- (4) The **service period** is—
  - (a) if a submitter or advice agency started the appeal in the P&E Court—2 business days after the appeal is started; or
  - (b) otherwise—10 business days after the appeal is started.
- (5) A notice of appeal given to a person who may elect to be a co-respondent must state the effect of subsection (6).
- (6) A person elects to be a co-respondent by filing a notice of election, in the approved form, within 10 business days after the notice of appeal is given to the person.

## SCHEDULE 1 APPEALS

### 1 Appeal rights and parties to appeals

- (1) Table 1 states the matters that may be appealed to—
  - (a) the P&E court; or
  - (b) a tribunal.
- (2) However, table 1 applies to a tribunal only if the matter involves—
  - (a) the refusal, or deemed refusal of a development application, for—
    - (i) a material change of use for a classified building; or
    - (ii) operational work associated with building work, a retaining wall, or a tennis court; or
  - (b) a provision of a development approval for—
    - (i) a material change of use for a classified building; or
    - (ii) operational work associated with building work, a retaining wall, or a tennis court; or
  - (c) if a development permit was applied for—the decision to give a preliminary approval for—
    - (i) a material change of use for a classified building; or
    - (ii) operational work associated with building work, a retaining wall, or a tennis court; or
  - (d) a development condition if—
    - (i) the development approval is only for a material change of use that involves the use of a building classified under the Building Code as a class 2 building; and
    - (ii) the building is, or is proposed to be, not more than 3 storeys; and
    - (iii) the proposed development is for not more than 60 sole-occupancy units; or
  - (e) a decision for, or a deemed refusal of, an extension application for a development approval that is only for a material change of use of a classified building; or
  - (f) a decision for, or a deemed refusal of, a change application for a development approval that is only for a material change of use of a classified building; or
  - (g) a matter under this Act, to the extent the matter relates to—
    - (i) the Building Act, other than a matter under that Act that may or must be decided by the Queensland Building and Construction Commission; or
    - (ii) the Plumbing and Drainage Act, part 4 or 5; or
  - (h) a decision to give an enforcement notice in relation to a matter under paragraphs (a) to (g); or
  - (i) a decision to give an infrastructure charges notice; or
  - (j) the refusal, or deemed refusal, of a conversion application; or
  - (k) a matter that, under another Act, may be appealed to the tribunal; or
  - (l) a matter prescribed by regulation.
- (3) Also, table 1 does not apply to a tribunal if the matter involves—
  - (a) for a matter in subsection (2)(a) to (d)—
    - (i) a development approval for which the development application required impact assessment; and
    - (ii) a development approval in relation to which the assessment manager received a properly made submission for the development application; or
  - (b) a provision of a development approval about the identification or inclusion, under a variation approval, of a matter for the development.
- (4) Table 2 states the matters that may be appealed only to the P&E Court.
- (5) Table 3 states the matters that may be appealed only to the tribunal.
- (6) In each table—
  - (a) column 1 states the appellant in the appeal; and
  - (b) column 2 states the respondent in the appeal; and

- (c) column 3 states the co-respondent (if any) in the appeal; and
  - (d) column 4 states the co-respondents by election (if any) in the appeal.
- (7) If the chief executive receives a notice of appeal under section 230(3)(f), the chief executive may elect to be a co-respondent in the appeal.

**Extract of Schedule 1 of the Planning Act 2016**

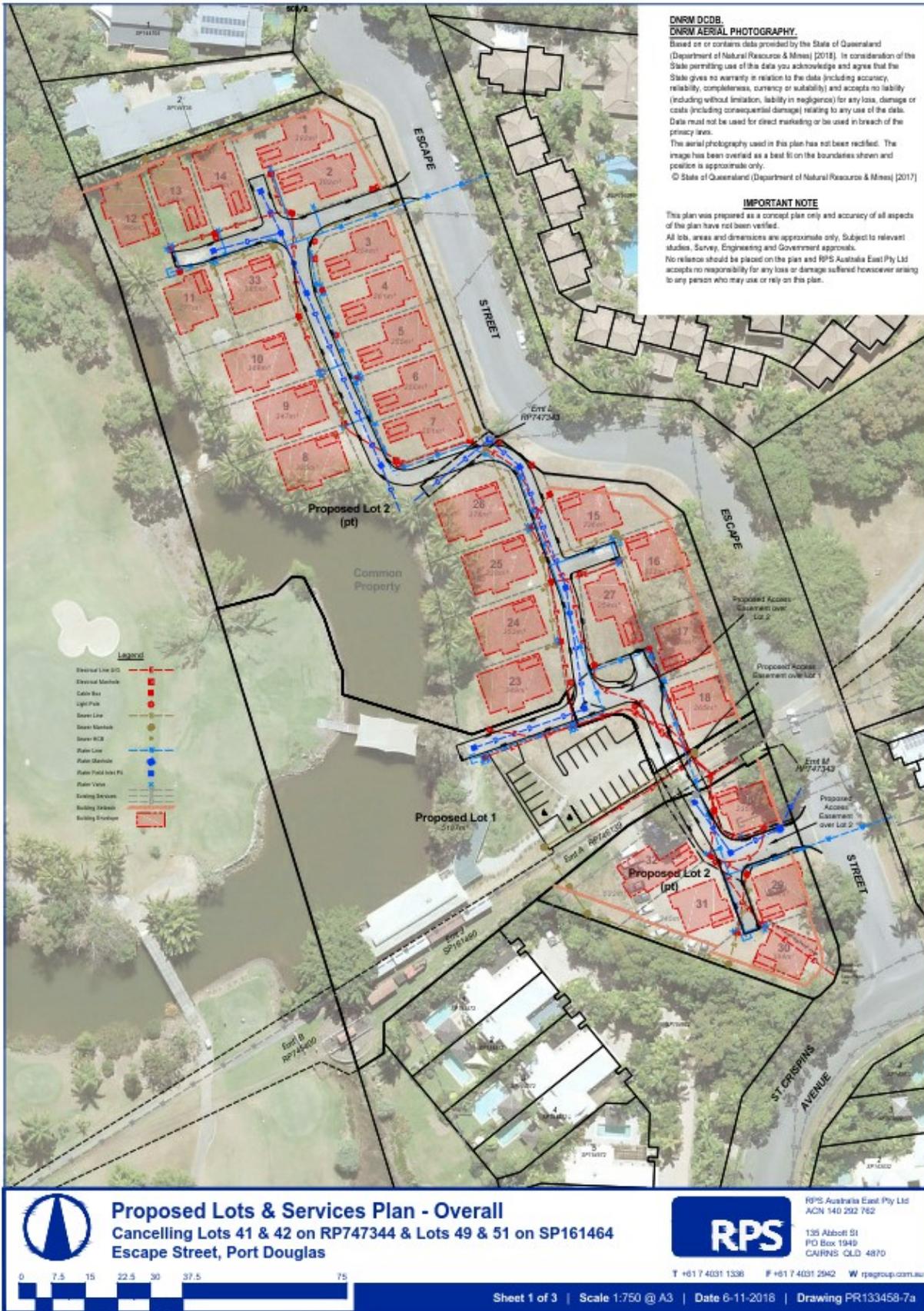
<b>Table 1</b>			
<b>Appeals to the P&amp;E Court and, for certain matters, to a tribunal</b>			
1. Development applications An appeal may be made against— <ul style="list-style-type: none"> <li>(a) the refusal of all or part of the development application; or</li> <li>(b) the deemed refusal of the development application; or</li> <li>(c) a provision of the development approval; or</li> <li>(d) if a development permit was applied for—the decision to give a preliminary approval.</li> </ul>			
Column 1 Appellant	Column 2 Respondent	Column 3 Co-respondent (if any)	Column 4 Co-respondent by election (if any)
The applicant	The assessment manager	If the appeal is about a concurrence agency’s referral response—the concurrence agency	1 A concurrence agency that is not a co-respondent 2 If a chosen assessment manager is the respondent—the prescribed assessment manager 3 Any eligible advice agency for the application 4 Any eligible submitter for the application

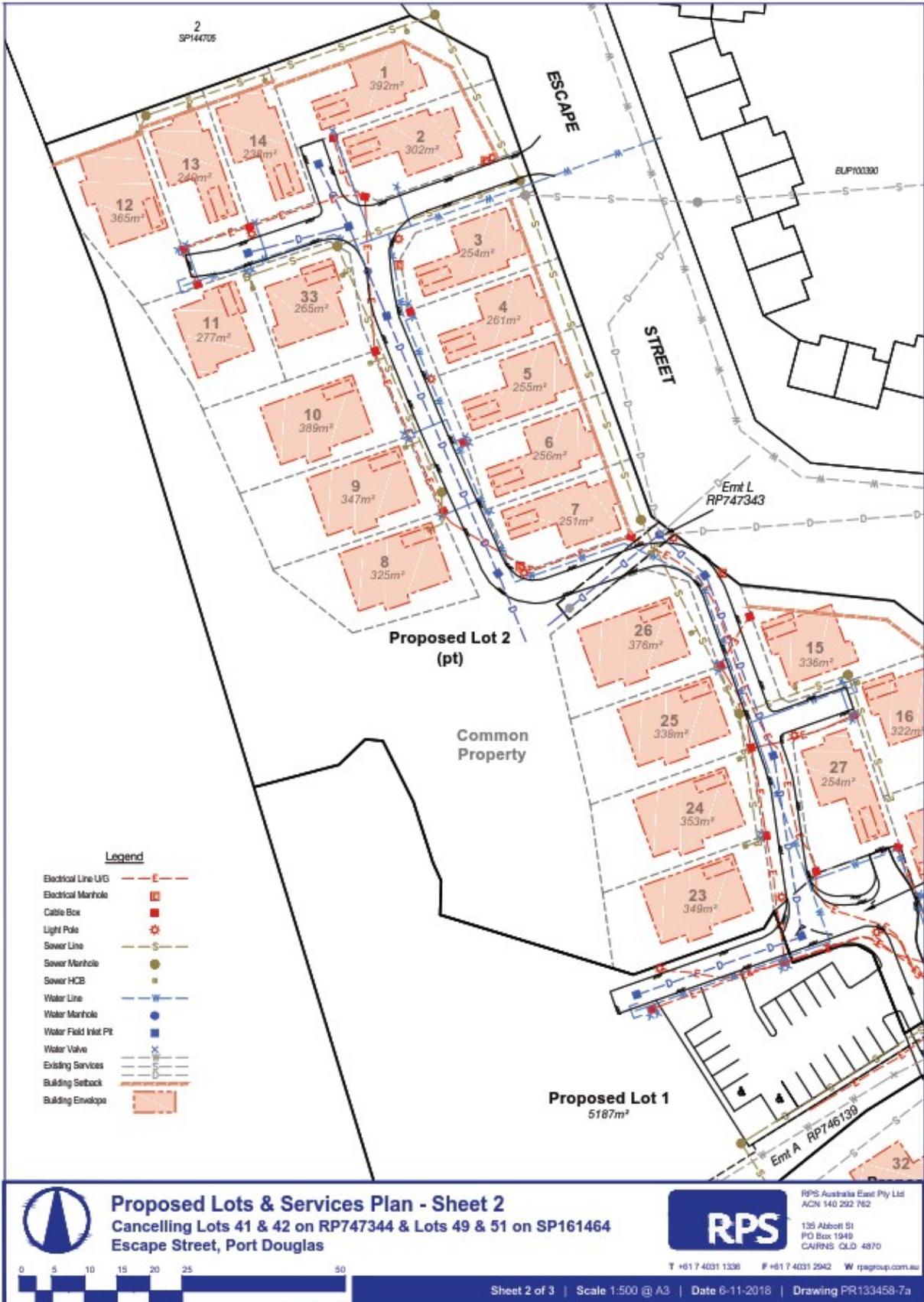
<b>Table 2 Appeals to the P&amp;E Court only</b>			
<p>2. Eligible submitter appeals</p> <p>An appeal may be made against the decision to give a development approval, or an approval for a change application, to the extent that the decision relates to—</p> <p>(a) any part of the development application for the development approval that required impact assessment; or</p> <p>(b) a variation request.</p>			
Column 1 Appellant	Column 2 Respondent	Column 3 Co-respondent (if any)	Column 4 Co-respondent by election (if any)
<p>1 For a development application—an eligible submitter for the development application</p> <p>2 For a change application—an eligible submitter for the change application</p>	<p>1 For a development application—the assessment manager</p> <p>2 For a change application—the responsible entity</p>	<p>1 The applicant</p> <p>2 If the appeal is about a concurrence agency's referral response—the concurrence agency</p>	<p>Another eligible submitter for the application</p>
<p>3. Eligible submitter and eligible advice agency appeals</p> <p>An appeal may be made against a provision of a development approval, or failure to include a provision in the development approval, to the extent the matter relates to—</p> <p>(a) any part of the development application or the change application, for the development approval, that required impact assessment; or</p> <p>(b) a variation request.</p>			
Column 1 Appellant	Column 2 Respondent	Column 3 Co-respondent (if any)	Column 4 Co-respondent by election (if any)
<p>1 For a development application—an eligible submitter for the development application</p> <p>2 For a change application—an eligible submitter for the change application</p> <p>3 An eligible advice agency for the development application or change application</p>	<p>1 For a development application—the assessment manager</p> <p>2 For a change application—the responsible entity</p>	<p>1 The applicant</p> <p>2 If the appeal is about a concurrence agency's referral response—the concurrence agency</p>	<p>Another eligible submitter for the application</p>

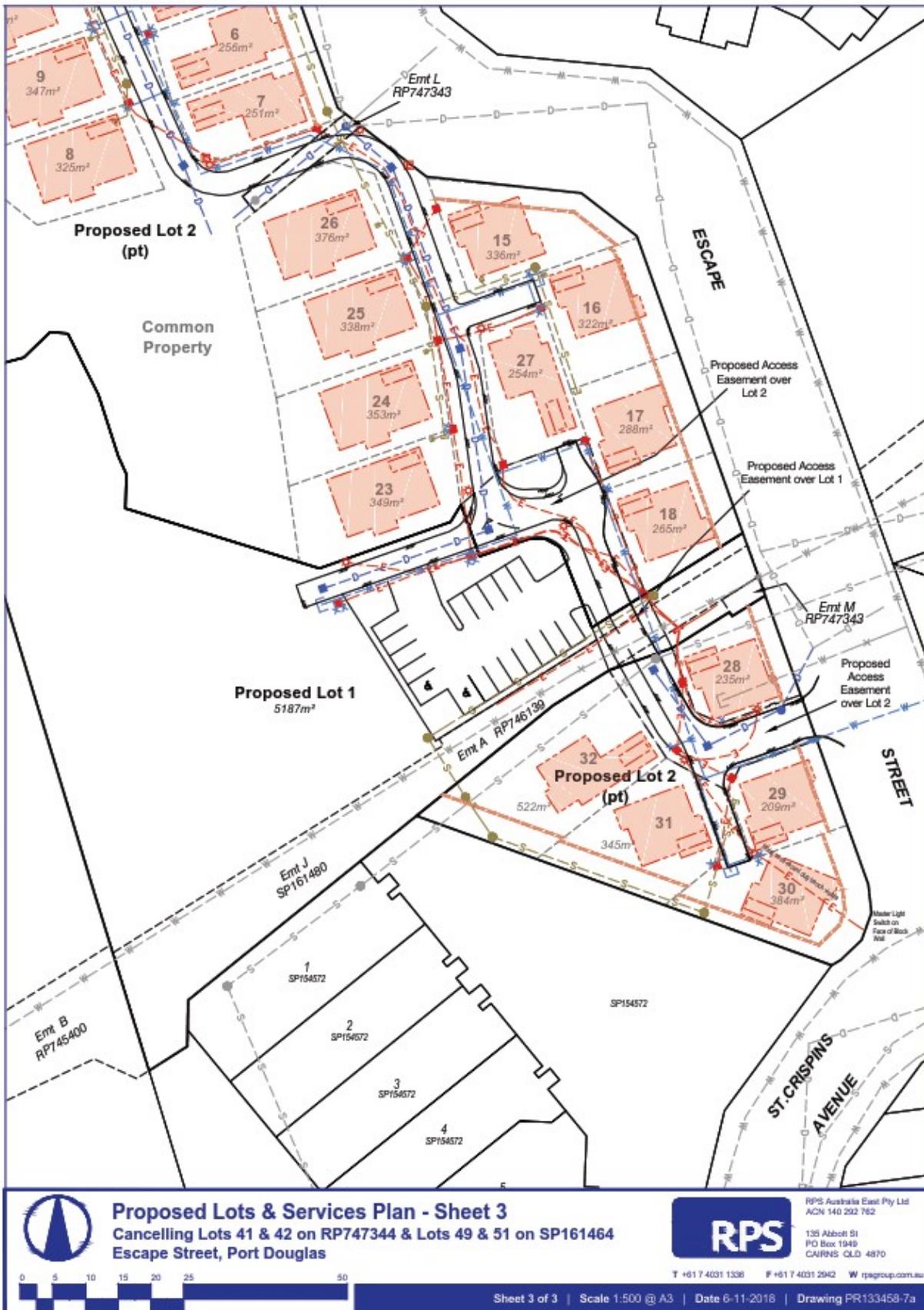
**Note:**

Attached is a Rights of Appeal Waiver form (Schedule 3). Please complete and return this form if you are satisfied with the approval and agree to the conditions contained therein and you wish to waive the 20 day appeal period available under the *Planning Act 2016*

**APPROVED PLANS (ATTACHING TO THE DECISION NOTICE)**









Number	Bearing	Distance
34	160°24'20"	3.376
35	58°05'55"	2.854
36	127°57'30"	1.500
37	50°58'40"	0.922
38	106°35'20"	2.326
39	139°59'15"	2.123
40	132°28'10"	2.377
41	150°20'25"	2.758
42	121°13'55"	2.897
51	31°07'50"	0.529
54	154°10'30"	1.893

**IMPORTANT NOTE**

- This plan was prepared for the sole purposes of the client for the specific purpose of producing a detail plan. This plan is strictly limited to the purpose and does not apply directly or indirectly and will not be used for any other application, purpose, use or matter. The plan is presented without the assumption of a duty of care to any other person (other than the Client ("Third Party") and may not be relied on by Third Party.
- RPS Australia East Pty Ltd will not be liable (in negligence or otherwise) for any direct or indirect loss, damage, liability or claim arising out of or incidental to:
  - Third Party publishing, using or relying on the plan;
  - RPS Australia East Pty Ltd relying on information provided to it by the Client or a Third Party where the information is incorrect, incomplete, inaccurate, out-of-date or unreasonable;
  - any inaccuracies or other faults with information or data sourced from a Third Party;
  - RPS Australia East Pty Ltd relying on surface indicators that are incorrect or inaccurate;
  - the Client or any Third Party not verifying information in this plan where recommended by RPS Australia East Pty Ltd;
  - lodgement of this plan with any local authority against the recommendation of RPS Australia East Pty Ltd;
  - the accuracy, reliability, suitability or completeness of any approximations or estimates made or referred to by RPS Australia East Pty Ltd in this plan.
- Without limiting paragraph 1 or 2 above, this plan may not be copied, distributed, or reproduced by any process unless this note is clearly displayed on the plan.
- Scale shown is correct for the original plan and any copies of this plan should be verified by checking against the bar scale.
- The title boundaries as shown hereon were not marked at the time of survey and have been determined by plan dimensions only and not by field survey. If not able to be so located, services have been plotted from the records of relevant authorities where available and have been noted accordingly on this plan. Where such records either do not exist or are inadequate a notation has been made hereon.
- Prior to any demolition, excavation or construction on the site, the relevant authority should be contacted for possible location of further underground services and detailed locations of all services.

**NOTES**

Level Datum: AHD

Origin of Levels:

Meridian: MGA vide SP311489

Origin of Coordinates:

Contour Interval:  
Index:

SCALE 1:200 IS APPLICABLE ONLY TO THE ORIGINAL SHEET SIZE (A1). (1:400 @ A3)

AMENDMENTS

PROJECT MANAGER D Pinkham	CHECKED
SURVEYED DCW	DRAFTING CHECKED
DRAWN DGP 20/1/21	CAD REF 141541-300
SHEET SIZE A1	SHEET OF SHEETS 1 OF 2

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**Escape Villas Lot Layout**

**Escape St Port Douglas**

SCALE 1:200	DATE 20/1/21	DRAWING NO. PR141541-300	ISSUE
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